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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

19 **Juan Moreno,**

20 Plaintiff,

21 v.

22 **AKM Properties, LLC**, a California
23 Limited Liability Company;
24 **R.E.V. Group, Inc.**, a California
25 Corporation; and Does 1-10,

26 Defendants.

Case No. **CV 14-00030-GAF** (VBK)

27 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

28 Plaintiff Juan Moreno complains of Defendants AKM Properties, LLC,
a California Limited Liability Company; R.E.V. Group, Inc., a California
Corporation; and Does 1-10 ("Defendants") and alleges as follows:

29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. He is a
32 paraplegic who uses a wheelchair.
33
34 2. Defendant R.E.V. Group, Inc. owned and operated the gas station
35 located at or about 10808 Beverly Boulevard, Whittier, California ("Gas

COPY

1 Station"), both now and in December 2012.

2 3. Defendant AKM Properties, LLC owned the property where the Gas
3 Station is located at or about 10808 Beverly Boulevard, Whittier, California,
4 in December 2012 and currently owns the property.

5 4. Defendant AKM Properties, LLC leased the property to R.E.V. Group,
6 Inc. where the Gas Station is located at or about 10808 Beverly Boulevard,
7 Whittier, California, in December 2012 and currently leases the property to
8 R.E.V. Group, Inc.

9 5. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for
15 the events herein alleged, or is a necessary party for obtaining appropriate
16 relief. Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19

20 **JURISDICTION & VENUE:**

21 6. This Court has subject matter jurisdiction over this action pursuant to
22 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
23 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 7. Pursuant to pendant jurisdiction, an attendant and related cause of
25 action, arising from the same nucleus of operative facts and arising out of the
26 same transactions, is also brought under California's Unruh Civil Rights Act,
27 and the California Disabled Persons Act, which acts expressly incorporate the
28 Americans with Disabilities Act.

1 8. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.

4

5 **FACTUAL ALLEGATIONS:**

6 9. The Plaintiff went to the gas station in December 2012, to get gas.

7 10. The gas station is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 11. At each of the fuel dispenser pumps, there is an electronic card reader
10 for use by customers.

11 12. Unfortunately, controls and operating mechanisms for the card readers
12 are located about 60 inches above the ground. They exceed the maximum
13 height/reach requirements of the law.

14 13. The plaintiff personally encountered this problem. The inaccessible
15 card readers denied the plaintiff full and equal access and caused him
16 difficulty.

17 14. Additionally, although Mr. Moreno did not encounter this violation
18 personally, defendants have a policy and practice of placing obstructions in
19 the path of travel that prevent disabled customers from navigating in and
20 throughout the convenience store at the Gas Station.

21 15. Additionally, on information and belief, the plaintiff alleges that the
22 failure to remove these barriers was intentional because: (1) these particular
23 barriers are intuitive and obvious; (2) the defendants exercised control and
24 dominion over the conditions at this location and, therefore, the lack of
25 accessible facilities was not an "accident" because had the defendants
26 intended any other configuration, they had the means and ability to make the
27 change.

28

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
2 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
3 defendants (42 U.S.C. section 12101, et seq.)

4 16. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 17. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42
11 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
21 Appendix "D."

22 c. A failure to make alterations in such a manner that, to the
23 maximum extent feasible, the altered portions of the facility are
24 readily accessible to and usable by individuals with disabilities,
25 including individuals who use wheelchairs or to ensure that, to
26 the maximum extent feasible, the path of travel to the altered
27 area and the bathrooms, telephones, and drinking fountains
28 serving the altered area, are readily accessible to and usable by

individuals with disabilities. 42 U.S.C. § 12183(a)(2).

18. Card readers at fuel pumps are covered by height/reach requirements
of section 4.27 of the ADAAG for control or operating mechanisms. If the
clear floor space allows parallel approach by a person in a wheelchair, the
maximum high side reach allowed shall be 54 inches and the low side reach
shall be no less than 9 inches above the floor.

7 19. Here, the defendants failed to provide handicap-accessible card
8 readers and, therefore, failed to provide full and equal access to wheelchair
9 users such as the plaintiff. The card readers are located 60 inches above the
10 finish floor, which is higher than that allowed by law.

11 20. Pursuant to 28 C.F.R., Part 36, Appendix D, sections 4.1.3(12)(b) and
12 4.3.3, of the 1991 Standards and 36 C.F.R., Part 1191, Appendix D, 403.5.1
13 of the 2010 Standards, merchandise and products located on shelves—where
14 it is intended for customers to get it themselves—shall be located on an
15 accessible route. An accessible route measures a minimum of 36 inches in
16 width.

17 21. Here, parts of the convenience store at the Gas Station are inaccessible
18 to disabled customers because of paths of travel that narrow to less than 36
19 inches in width.

20 22. The Defendants are persons who own, operate, lease or lease to a place
21 of public accommodation. As such, the Defendants are required to ensure
22 that persons with disabilities are not discriminated against and, additionally,
23 have specific duties to (1) ensure that all construction, alteration, or
24 modification is barrier free and complies with the Americans with Disabilities
25 Act Accessibility Guidelines (“ADAAG”); and/or (2) remove all existing
26 barriers where such removal is “readily achievable,” and/or (3) to provide
27 alternatives to barrier removal. The Defendants have failed to meet these
28 obligations.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
3 51-53)

4 23. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 24. Because the defendants violated the plaintiffs' rights under the ADA,
8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
9 Code § 51(f), 52(a).)

10 25. Because the violation of the Unruh Civil Rights Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

14

15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA
16 DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
17 defendants) (Cal Civ. § 54-54.8)

18 26. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint.

21 27. Because the defendants violated the plaintiffs' rights under the ADA,
22 they also violated the Disabled Persons Act and are liable for damages. (Civ.
23 Code § 54.1(d), 54.3(a).)

24 28. Because the violation of the Disabled Persons Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiffs, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

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1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
2 and against all defendants)

3 29. Plaintiff repleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint.

6 30. The Defendants had a general duty and a duty arising under the
7 Americans with Disabilities Act and the Unruh Civil Rights Act and
8 California Disabled Persons Act to provide safe, convenient, and accessible
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
10 paragraphs, has caused injury and damage as alleged above.

11

12 **PRAYER:**

13 Wherefore, Plaintiffs pray that this court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California
20 Disabled Persons Act which damages provide for actual damages and a
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
22 acts, simultaneously, and an election will be made prior to or at trial.

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1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ.
3 Proc. § 1021.5.

4 Dated: October 22, 2013

5 CENTER FOR DISABILITY ACCESS

6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff

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